

REMARKS

The enclosed is responsive to the Final Office Action mailed on September 29, 2009. At the time the Examiner mailed the Office Action claims 12-19, 35, 36, 106 and 107 were pending. By way of the present response all claims associated with the March 17, 2004 Request for Interference with U.S. Patent Application No. 08/770,123 (issued as U.S. Pat. No. 7,073, 504) and the October 15, 2007 Request for Interference with U.S. Patent Application No. 09/468,749 (issued as U.S. Pat. No. 6,432,116) have been canceled.

Claim 107 has been amended to include the feature of “a proximal end and a distal end, wherein the device is substantially straight between the proximal end and distal end when at rest”. Support for the amendment can be found in at least page 16, lines 14-23 of the original application Serial No. 10/600,298, which corresponds to paragraph [0083] of published application U.S. Pub. No. 2004/0079377. New claims 108-116 have been added. Applicant respectfully requests reconsideration of the present application and the allowance of all claims now presented.

Claim Rejections - 35 U.S.C. § 102

Examiner has rejected claim 107 under 35 U.S.C. § 102(e) as being anticipated by *Callister* (U.S. Patent No. 6,432,116). Applicant disagrees and respectfully submits that the priority date for U.S. Patent No. 6,432,116 does not predate the priority date for the instant application.

U.S. Patent No. 6,432,116 issued from an application filed on December 21, 1999, which claims priority to Application No. 09/112,085, filed July 8, 1998. The July 8, 1998 priority date of U.S. Patent No. 6,432,116 does not predate any of the June 7, 1995, the September 24, 1997, or the June 8, 1998 dates in the priority claim for the instant application. The first paragraph of the U.S. Patent No. 6,432,116 specification also claims priority to

Application No. 08/770,123 filed December 18, 1996 (hereinafter “the ‘123 application”), however the ‘123 application does not disclose or suggest each and every feature of independent claim 107. Specifically, the ‘123 application does not disclose or suggest “a tissue ingrowth element wound into the tubular structure” as is taught and claimed in independent claim 107.

Accordingly, it is respectfully submitted that U.S. Patent No. 6,432,116 does not qualify as 35 U.S.C. § 102(e) art, and Applicant respectfully requests the withdrawal of the rejection of claim 107 under 35 U.S.C. § 102(e) over U.S. Patent No. 6,432,116.

New Claims

New claims 108-116 have been added. It is respectfully submitted that new claims 108-116 are not taught by the prior art of record.

New claim 108 requires, *inter alia*, the tubular structure is disposed around an inner coil. Support for new claim 108 can be found in at least paragraph [0083] of U.S. Pub. No. 2004/0079377.

New claims 109-115 are drawn to, *inter alia*, the tissue ingrowth element. Support for the claims can be found in at least paragraphs [0096]-[0099] of U.S. Pub. No. 2004/0079377.

New claim 116 requires, *inter alia*, the first configuration is a first diameter and the second larger configuration is a second larger diameter. Support for new claim 116 can be found in at least paragraph [0103] of U.S. Pub. No. 2004/0079377.

Pursuant to 37 C.F.R. § 1.136(a)(3), applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. §§ 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

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